622

SUPREME COURT OF THE UNITED STATES.

No. 113.

LEWIS A. COLLIER, PLAINTIFF IN ERROR,

vs.

JOSIAH STANBROUGH.

IN ERROR TO THE SUPREME COURT FOR THE WESTERN DISTRICT OF LOUISIANA.

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J. & G. S. GIDEON, printers.

STATE OF LOUISIANA, *parish of Madison, ninth judicial district court:*

Pleas before the honorable the ninth judicial district court of the State of Louisiana, in and for the parish of Madison.

Be it known and remembered, that on the fourteenth day of December, in the year of our Lord eighteen hundred and forty-two, Lewis A. Collier, by his attorney, filed in this office his petition, which is in the words and figures, as follows, to wit:

To the honorable the judge of the ninth judicial district court, holding sessions in and for the parish of Madison, State of Louisiana.

The petition of Lewis A. Collier, residing in the parish of Concordia, in said State, respectfully represents: That Dougal McCall, residing in said parish of Concordia, did on the 6th day of February, A. D. 1841, execute his three several promissory notes, all of even date, each for the sum of three thousand eight hundred and eleven dollars and $\frac{22}{100}$, all of which are made payable to the order of David Stanbrough, curator, &c., at the Merchants' Bank of New Orleans.

All of said notes are secured by special mortgage, with a confession of judgment on certain lands, situate on Walnut bayou, being and lying in the parish of Madison, which are fully described and designated in the act of mortgage, passed before R. C. Downes, parish judge of the parish of Madison, on the 6th day of February, A. D. 1841. The first of said notes was made payable on the 1st day of January, A. D. 1842; the second, on the 1st day of January, A. D. 1843; the third, on the 1st day of January, A. D. 1844. Your petitioners shews, that one Josiah Stanbrough residing in said parish of Madison, illegally and fraudulently, possessed himself of the first due of said notes, and claims ownership of the same; and did on the 30th day of July, A. D. 1842, present his certain petition to the ninth district court of Louisiana, for the parish of Madison, filed in the suit of Josiah Stanbrough vs. Dougal McCall, and numbered 537 of the docket of said court, praying for a writ of seizure and sale, against said mortgaged property, embraced in said act of mortgage, which was granted him accordingly. Your petitioner shews, that said property is now liable to be seized and sold for the payment of said note as above mentioned, at the suit of Josiah Stanbrough. Your petitioner shews, that he is the legal owner of said notes above mentioned, by virtue of purchase at marshal's sale, on the 9th day of April, A. D. 1842, which said notes were seized and sold in the suit of the Farmers' Bank of Virginia vs. David Stanbrough, curator, &c., by virtue of a writ of fieri facias issued from the ninth circuit court of the United States, for the eastern district of Louisiana; all of which will more fully appear by reference to the marshal's conveyance of said notes hereto annexed, and made a part of this petition. Your petitioner alleges, that by virtue of said purchase, he became legally subrogated to all the rights, title and interest, of the said David Stanbrough, cura-

tor, &c., in and to said notes and mortgage above described, and further shews that since his said purchase, said Josiah Stanbrough illegally and fraudulently obtained possession of one of said notes as aforesaid; and if he is permitted to proceed in said order of seizure and sale, it will cause your petitioner an irreparable injury. Petitioner shews, that Dougal McCall is not in possession of said land, and is insolvent, and has no interest in said land in fact and in truth. Petitioner shews, that said three above described notes were made by said McCall to said David Stanbrough, as curator of the estate of Jesse Harper, which said estate is indebted to petitioner at least in the sum of fifteen thousand seven hundred and fifty dollars; if your said petitioner's claim to said three notes shall be adjudged not to be valid, and if your petitioner's claim to said three notes shall be adjudged to be valid, then the demand of petitioner against said estate, will be reduced by the sum of three thousand five hundred dollars, the consideration or price paid for said notes by petitioner at said marshal's sale.

Petitioner shews, that the estate of Jesse Harper is totally insolvent; and that the said David Stanbrough, curator of said estate, has leagued with the said Josiah Stanbrough to defraud the petitioner, and all creditors of the said estate of Harper; that said note, of which the said Josiah Stanbrough has fraudulently possessed himself as aforesaid, is the property of petitioner as above said; but if it shall be adjudged that your petitioner is not the legal owner of said notes, then petitioner alleges the said note is the property of the estate of Jesse Harper; that Josiah Stanbrough never gave any value for said note; that said David Stanbrough had no right to transfer said note; and of this fact said Josiah Stanbrough was well aware at the time he took said note.

That if the said Josiah Stanbrough and the sheriff of the parish of Madison, in whose hands the said order of seizure and sale now is, shall be allowed to proceed to sell said land, it will cause your petitioner an irreparable injury, for the reason above set forth.

The premises, the bond hereto annexed and affidavit of petitioner considered, the petitioner prays, that an injunction issue in the premises; and that the plaintiff, the said Josiah Stanbrough, John T. Mason, clerk of said court, and Thomas B. Scott, sheriff of said parish of Madison, be perpetually enjoined from further proceedings in said suit; that said Josiah Stanbrough be decreed to pay all costs of suit and of this injunction, and prays for general relief; and as in duty, &c.

R. C. STOCKTON,
for petitioner.

Affidavit.

Lewis A. Collier, the petitioner, makes oath that the facts set forth in the above petition are true; and that in his belief they entitle him, affiant, to an injunction, as prayed for in said petition.

LEWIS A. COLLIER.

Signed, and sworn to this day before me, 3d November, 1842.

JOHN T. MASON,
Justice of the Peace.

Order of the Judge.

Let writs of injunction issue as prayed for, staying all proceedings under the writ of seizure and sale mentioned in the petition; and that all the parties defendant herein be enjoined from proceeding further, until the matter is heard and judgment thereon. It is further ordered, that the plaintiff, Lewis A. Collier, execute his bond and security in favor of the defendants, in the sum of one thousand dollars, conditioned according to law.

Done and signed, November 24th, 1842.

THO. CURRY,
District judge, 9th judicial district.

(Endorsed.) No. 589, Lewis A. Collier vs. *N.* Josiah Stanbrough, John T. Mason and Thomas B. Scott. Filed December 14th, 1842.
J. W. COUCH, *D'y Cl'k.*

Mortgage.

STATE OF LOUISIANA, *parish of Madison:*

Be it remembered, that on this sixth day of February, A. D. eighteen hundred and forty-one, before me, Richard Charles Downes, parish judge, ex-officio notary public, in and for said parish, personally appeared Dougal McCall, a resident of the parish of Concordia, in this State, who said and declared, that whereas he stands justly indebted to the succession of Jesse Harper, late of this parish, deceased, in the sum of eleven thousand four hundred and thirty-three $\frac{66}{100}$ dollars, for which he has this day made and executed his three several promissory notes of even date herewith, for the sum of three thousand eight hundred and eleven $\frac{22}{100}$ dollars each, all which are made payable to the order of D. Stanbrough, curator (of said succession) at the Merchants' Bank, New Orleans; the first, on the first day of January next, 1842; the 2d, on the first day of January, 1843; and *and* the 3d and last, on the first day of January, 1844; all bearing interest at eight per cent. per annum, from date; all which notes are paraphed according to law to identify them herewith.

Now, in order to secure the full and punctual payment of all the said notes, as they respectively fall due, and payable according to their tenor, he, the said Dugal McCall, does specially mortgage and hypothecate, in favor of David Stanbrough, curator, as aforesaid, all the following described property, lands situated on Walnut bayou, in this parish, viz: that certain plantation situated as aforesaid, containing six hundred and eighty-two $\frac{24}{100}$ acres, and composed of lots Nos. four, five and six, of section No. thirty-six, in township No. sixteen, of range No. thirteen, east; lots one, two, five, six, seven and twelve, of section No. eighty-eight, in township No. fifteen, of range No. thirteen, east; the south-east quarter of south-east quarter of section No. forty-eight, in township No. sixteen, range No. fourteen, east; and the north-west quarter of section No. twenty-two, in township No. fifteen, range No. fourteen, east. Hereby confessing judgment in favor of said D. Stanbrough, curator as afore-

said, for the said sum of money, to be paid with interest as aforesaid, and covenanting not to dispose of said land to the prejudice of this mortgage.

And to these presents also personally appeared the said David Stanbrough, curator, &c., who declared that he does hereby accept this mortgage, and that he authorizes the recorder of mortgages for this parish to cancel and release a certain mortgage of record in this parish, from Thomas A. Compton to him the said curator, for securing the payment of the sum of sixteen thousand three hundred and seventy dollars 66⅔ [cents] dated April 23d, 1839.

And the said parties dispence with the production of a certificate of mortgages, and release me, judge, from all liability for passing this act without said certificate. The said mortgagor declared that he acquired the above described mortgaged lands at a sheriff's sale of property of said Thomas A. Compton, made in this parish to-day.

Done and passed on the day and date first above written, in presence of Thomas B. Scott and Thomas A. Compton, competent witnesses, who sign with said appearers and me, judge and notary, after due reading hereof.

(Signed) DUGAL McCALL,
D. STANBROUGH, *Curator.*
THOS. B. SCOTT,
THOS. A. COMPTON,
RICH'D CHAS. DOWNES,
Parish Judge.

STATE OF LOUISIANA, *parish of Madison:*

I certify that the foregoing is a true copy of the original act on file, and of record in my office, July 8th, 1842.

R. C. DOWNES, [SEAL.]
Parish Judge.

(Endorsed,) 589. Dugal McCall, mortgage, D. Stanbrough, curator. Copy filed Dec'r 14, 1842.

J. W. COUCH, *D'y Cl'k.*

Bond.

Know all men by these presents, that we, Lewis A. Collier and Archibald Matthews, are held and firmly bound, in solido, unto Josiah Stanbrough, his heirs and assigns, in the just and full sum of one thousand dollars, for value received; for the faithful payment whereof, we bind ourselves, our heirs and assigns, firmly by these presents, this, the 13th day of December, A. D. 1842.

The condition of the above obligation is such, that whereas the above bounden Lewis A. Collier has this day presented to the ninth district court of the State of Louisiana for the parish of Madison, his certain petition praying for a writ of injunction in the suit of Josiah Stanbrough vs. Dougal McCall, No. 537 of the docket of said court, granted him accordingly.

Now, therefore, if the said Lewis A. Collier shall well and truly pay all such interest, cost, and damages, as the said Josiah Stanbrough shall sustain by the wrongful suing out of said writ of injunction, then, in such case, the above obligation to be void; otherwise, to remain in full force and virtue of the law.

In faith and testimony whereof, we have hereunto subscribed our names, in the parish of Madison, Louisiana, this day and date above written.

LEWIS A. COLLIER,
A. MATTHEWS.
J. J. AMONETT.

Attest:

(Endorsed,) 589. Bond, filed Dec'r 14, 1842.
J. W. COUCH, *D'y Clk.*

Writ of injunction.

And on the 28th day of December, A. D. 1842, the following writ of injunction issued from this office:

STATE OF LOUISIANA, *parish of Madison, ninth district court:*

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH, JOHN T. MASON, and THOMAS B. SCOTT. } No. 589.

The State of Louisiana and said court to Josiah Stanbrough, John T. Mason, and Thomas B. Scott, all residing in the parish of Madison:

Whereas, due proof has been made before the honorable the ninth district court for the parish of Madison, State aforesaid, by Lewis A. Collier, of the parish of Concordia, in this State; that an order of seizure and sale has been granted Josiah Stanbrough in suit No. 537, styled Josiah Stanbrough vs. Dougal McCall, by the judge of this parish, which order of seizure and sale plaintiff, in this suit, makes oath that it is illegal and unjust. Now, therefore, you are commanded and enjoined to proceed no further with the same. Herein fail not, under the penalty of the law.

Witness the honorable Thomas Curry, judge of said court, this 28th day of December, A. D. 1842.

J. W. COUCH,
[SEAL.] *Deputy clerk of said court.*

(Return)—Received on the 28th of Dec'r, A. D. 1842, and served on the 29th day of the same month and year, by handing a certified copy of this injunction in person to Thos. B. Scott and John T. Mason, in Richmond, La.

Service, $5 00.

H. D. DOWNS, *Coroner.*

(Endorsed,) 589. Madison dist. court, Lewis A. Collier vs. Josiah Stanbrough, John T. Mason, and Thomas B. Scott. Writ of injunction, filed January 25th, 1843.

J. W. COUCH, *Dept. Clk.*

Minutes.

And on Thursday, May 4th, A. D. 1843, the following entry was made on the minutes of the court, p. 416.

LEWIS A. COLLIER.
vs. } 589.
JOSIAH STANBROUGH et al.

Answer of Josiah Stanbrough, in injunction filed—Answer.

9th district court, parish of Madison, May term, 1843.

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH, JOHN T. MASON, and THOMAS B. SCOTT.

The defendant, Josiah Stanbrough, appearing, by his counsel, denies all and singular the allegations in plaintiff's petition relied on to charge this defendant, except only such as are herein specially admitted. For further answer respondent denies that the said plaintiff has any right or title whatever to the said note claimed in his petition, derived either from the said pretended proceedings of the said marshal, or otherwise; denies that said notes were ever legally seized, or levied upon, or sold, by the said marshal; but avers that he has the rightful ownership and possession of the said notes sued upon; avers that the said note *are* the property of this respondent; that the execution and sale, pretended and relied on, in plaintiff's petition, as having taken place in the suit of the Farmers' Bank of Virginia vs. David Stanbrough, curator of Jesse Harper, in the circuit court of the United States, were wholly null and void, because none of the forms of law were observed by the said marshal in the said execution and sale, in this, that the said note *were* never legally seized or levied upon; that it was never legally appraised or advertised, as required by law; and the said pretended sale of said note for the price of three thousand five hundred dollars, as alleged by said plaintiff, is, upon its face, illegal and fraudulent, and an absolute nullity; that the property of the succession of Jesse Harper, whilst administered in the probate court of Louisiana, could not be legally subjected to any writ of execution from the federal courts, as alleged in plaintiff's petition to be the basis of plaintiff's claim, and conveyed no rights to the said plaintiff.

Wherefore, the premises considered, respondent prays that said plaintiff's claim be rejected; that said note be decreed to be the property of this respondent; that the said plaintiff's injunction be dissolved, with twenty per cent. damages, as allowed by law, upon the amount of the judgment, or order of seizure and sale granted your respondent in suit No. 537, viz: the amount of three thousand eight hundred and eleven $\frac{32}{100}$ dollars, and the further sum of two hundred and fifty dollars, as

special damages, suffered by your respondent in defence of this suit, for costs, and for general relief.

BEMISS & WINTER,
and JAMES DUNLAP & B. M. BROWDER,
Atty's for respondent.

(Endorsed,) No. 589. 9th district court, Lewis A. Collier vs. Josiah Stanbrough, John T. Mason, Thomas B. Scott.

Answer in injunction filed May 4th, 1843.

A. R. POTTER, *Dy. Cl'k.*

Minutes.

And on Saturday, May 6th, A. D. 1843, the following entry was made on the minutes of the court, p. 424.

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH and others. } 589. Set for Friday, 14th inst.

Subpœna.

And on the 12th day of May, A. D. 1843, the following subpœna issued from this court:

THE STATE OF LOUISIANA, *parish of Madison, 9th district court:*

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH. } No. 589.

To the sheriff of the said parish, greeting:

You are hereby commanded to summon Nicholas Barnes to be and appear in the district court, held at the court house, in the town of Richmond, in the parish aforesaid, forthwith, then and there to testify, and the truth to say, in a certain matter of controversy now pending in said court, between L. A. Collier, plaintiff, and Josiah Stanbrough, defendant, on the part of the plaintiff, and not thence depart until legally discharged. Herein fail not.

Witness the honorable Thomas Curry, judge of said court, this 12th [SEAL.] day of May, A. D. 1843.

A. R. POTTER,
Dep. cl'k of said court.

(Plaintiff's return)—Rec'd on the 12th, and served personally on the same day at Richmond, La.

Service, 62½.

THO. B. SCOTT, *Sh'ff.*

(Endorsed,) 589. Sub. to the sh'ff filed May 12th, 1843.

A. R. POTTER, *D'y Cl'k.*

Minutes.

And on Tuesday, May 16th, A. D. 1843, the following order was entered on the minutes of the court, p. 449:

626.

By reason of the law and the evidence being in favor of the defendant, Josiah Stanbrough, it is ordered, adjudged, and decreed, that the injunction sued out in this case be dissolved; and it is further decreed that the defendant recover of the said plaintiff, Lewis A. Collier, and his surety, Archibald Matthews, *in solido*, the sum of four hundred and twenty-seven dollars damages, being ten per cent. upon the amount of said defendant's claim, when enjoined, and that said plaintiff pay the costs of this suit to be taxed.

Evidence.

LEWIS A. COLLIER vs JOSIAH STANBROUGH and others. } No. 589. Injunction.

Plaintiff's evidence.

Petition and order in case No. 537, in the name of Josiah Stanbrough vs. Dougal McCall, the same enjoined in this case—A.

Note of Dougal McCall, favor of David Stanbrough, curator of Jesse Harper's estate, marked "ne varietur," and protest—B.

Act of mortgage by McCall, favor Jesse Harper's estate—C.

Agreement of facts admitted—D.

Admitted, that Lewis A. Collier is a creditor of Jesse Harper's estate, and that for two years, at least, the said succession has been insolvent.

Admitted, that the judgment in the case of the Farmers' Bank of Virginia against David Stanbrough, curator of the succession of Jesse Harper, dec'd, rendered in the United States circuit court of the eastern district of the State of Louisiana, was made final on default.

Admitted, that David Stanbrough is now, and has been, curator of the succession of Jesse Harper, dec'd, ever since the first day of January, 1840.

Petition and order of injunction by the probate court of the parish of Madison, and sheriff return, enjoining the sale of the notes sued on, writ of injunction, and sheriff's return—E.

Admitted, that David and Jesse Stanbrough are brothers, and Josiah Stanbrough is the son of Jesse; that they all live within some three or four miles of each other; that Jesse Stanbrough is security for David on his curator's bond, as curator of Harper's estate.

Admitted, that in the estate of Harper there was an inventory taken by the probate court of Madison of said succession of Harper, an order of sale and sale of the property of Harper's estate, and the notes in dispute are of the proceeds of sale; that all those proceedings took place by order of the probate court.

It is admitted, that there is no order on the records of the court of probates ordering the estate of Jesse Harper to be insolvent.

Admitted, that Mr. Stockton, a creditor for $1,000, has never received from the estate of Jesse Harper but $250.

I hereby certify, that the above and foregoing contains all the evidence

and documents adduced on the trial of this cause, taken down by the court, by consent.

E. K. WILSON,
Judge 7th district.

(Endorsed,) 589. Lewis A. Collier vs. Testimony, Josiah Stanbrough. Filed May 16, 1843.

A. R. POTTER, *D'y Clk.*

Document A.

STATE OF LOUISIANA, *parish of Madison:*

To the honorable Thomas Curry, judge of the ninth district court, State of Louisiana, holding sessions in and for the parish of Madison, in said district:

The petition of Josiah Stanbrough, who resides in said parish and State, with respect would represent, that one Dugal McCall, who resides in the parish of Concordia, in the State of Louisiana, is justly indebted to your petitioner in the sum of three thousand eight hundred and eleven dollars $\frac{22}{100}$ of a dollar, with interest thereon at the rate of eight per cent. per annum from the 6th day of February, 1841, as will at large appear by reference to the annexed note, which is here filed, and prayed to be taken as part hereof.

Your petitioner also shews, that on the 4th day of January, 1842, the said note was presented at the Merchants' Bank, New Orleans, where the said note was made payable, and the payment thereof duly and legally demanded, and being refused, the same was duly and legally protested for non-payment; all of which will more fully appear by a duly certified copy of said act of protest, which is herewith filed, and prayed to be taken a part hereof.

Your petitioner also shews, that the said note sued on, and herewith filed, and two others for a similar amount, are due on the 1st and 4th of January, 1843, and 1st and 4th of January, 1844, all signed by the said Dugal McCall, and payable to the order of David Stanbrough, curator, &c., are secured by, and identified with, a certain act of mortgage made and passed before Richard C. Downes, parish judge of the parish of Madison, and the 6th day of February, A. D. 1841, a duly certified copy of which mortgage is here filed, and prayed to be taken a part hereof.

Your petitioner also shews, that the note herewith filed, as aforesaid, has been transferred to him by Jesse Stanbrough, and that said note was transferred by [him] to said Jesse Stanbrough by David Stanbrough, curator, &c., to whom said note was made payable; and that your petitioner has been subrogated to all the rights of the said Jesse Stanbrough, or the said David Stanbrough, by public act passed before the said Richard C. Downes, parish judge, on the 21st day of July, A. D. 1842, a copy of which is herewith filed, and prayed to be taken as part hereof.

Your petitioner shews, that the said act of mortgage imports a confession of judgment in favor of said David Stanbrough, curator, &c.; and he having been subrogated to all of said David Stanbrough's rights, un-

der said mortgage, as aforesaid, and there being in said act of mortgage a *compact non-alienation*, and the said note being identified with said act of mortgage; all of which will more fully appear by said note and mortgage.

Your petitioner shews, that he is entitled to an order of seizure and sale against the lands mentioned and described in the act of mortgage aforesaid, which lands are situated in the parish of Madison, and to have said lands seized and sold for so much cash as will pay the note here filed, together with all interest, costs of protest, and costs of court; and on such terms of credit as will pay the remaining two notes not now due, mentioned in said act of mortgage, at such times as said notes may fall due, to wit, on the 1st and 4th of January, 1843, and 1st and 4th of January, 1844.

Your petitioner therefore prays, that he have judgment of your honorable court, allowing him to seize and sell, according to law, the lands mentioned in said act [of] mortgage, for cash, to pay the note herewith filed, together with interest and costs as aforesaid, and such terms of credit as will bring the two notes last mentioned in said act of mortgage due, to wit, on the 1st and 4th of January, 1843, and 1st and 4th of January, 1844.

Your petitioner prays for general relief in the premises, &c.

BEMISS & HENDERSON,
and J. WALTER PHILIPS,
Atty's for plaintiff.

STATE OF LOUISIANA, *parish of Madison, ninth judicial district:*

JOSIAH STANBROUGH
vs.
DUGAL MCCALL. } On a note mortgaged and act of subrogation.

By reason of the law, and the annexed note, act of mortgage, and act of subrogation, it is ordered, that executory process do issue thereon, and that an order of seizure and sale issue against the mortgaged property described in the annexed act of mortgage, and that it be seized and sold, as prayed for in the foregoing petition, or so much thereof as will satisfy the notes mentioned therein, to wit: the said sale to be for cash, for the sum of three thousand eight hundred and eleven dollars and 22 cents, with eight per cent. interest thereon from the sixth day of February, 1841, until paid, and costs; and for three thousand eight hundred and eleven dollars and 22 cents, payable the first January, 1843; and for three thousand eight hundred and eleven dollars and 22 cents, payable the first day of January, 1844—each of said last mentioned sums bearing eight per cent. interest from the 6th February, 1841, until paid.

And it is further ordered, that said property be advertised, and due notice thereof given according to law.

Done and signed at chambers, this 30th day of July, 1842.

THO. CURRY,
Dist. judge, ninth judicial district.

(Endorsed.)—537, "A."—Madison parish.—Josiah Stanbrough vs. Dougal McCall.—Petition, note, and order of seizure and sale.
Filed, August 9, 1842.

J. W. COUCH, *D'y clerk.*

Document B.

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known, that on this fourth day of January, in the year one thousand eight hundred and forty-two, at the request of Messrs. Peyraux, Arcacil & Co. holder of the original promissory note, whereof a true copy is on the reverse hereof written, I, Louis Thimele Caire, notary public, dwelling in the city of New Orleans, duly commissioned, repaired to the Merchants' Bank, situate Magazine street, in this city, and then and there speaking to the paying teller, I presented, for payment, the said promissory note, which he took and examined, and having consulted his books, returned the note, saying that the bank has no funds belonging to the subscriber, and no account open, and that therefore they cannot pay the same. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of said promissory note, as against all other, whom it doth or may concern, for all damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said promissory note.

Thus done and protested in the presence of Messrs. Jean Jacques Conte and Cyprien Combe Ladreyere, witnesses.

In testimony whereof, I grant these presents under my signature, [SEAL.] and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

LOUIS T. CAIRE, *Not. Pub.*

JN. J'QUES CONTE,
CY. COMBE LADREYERE.

PARISH MADISON, *Feb. 6th*, 1841.

Dollars 3,811 $\frac{22}{100}$.

On the 1st day of January next, I promise to pay to the order of David Stanbrough, curator, &c., at the Merchants' Bank, New Orleans, three thousand eight hundred and eleven $\frac{22}{100}$ dollars, value rec'd, with eight per cent. interest from date.

(Signed) DUGAL McCALL.

Ne varietur, February 6, (on the back,) David Stanbrough, curator, 1841.

RICHARD CHAS. DOWNES,
P. judge, parish of Madison, La.

B.—*Note.*

PARISH MADISON, *Feb. 6th*, 1841.

Dollars 3,811 $\frac{22}{100}$.

On the first day of January next, I promise to pay to the order of David

628.

Stanbrough, curator, &c., at the Merchants' Bank, New Orleans, three thousand eight hundred and eleven $\frac{22}{100}$ dollars, value rec'd, with eight per cent. interest from date.

(Signed) DUGAL McCALL.

Ne varietur, February 6th, 1841.

RICH'D CHAS. DOWNES,
P. judge, Parish of Madison, La.

(Endorsed.)—David Stanbrough, curator, Jesse Stanbrough.—537.
Filed, August 9th, 1842.

J. W. COUCH, *D'y clerk.*

(Protest endorsed.)—537.—Protest Dugal McCall, Cop., $3,811 22. Protest and ms. $3, $3,814 22, Peryeoux, Arcercil & Co.—(B.)
Filed, August 9th, A. D. 1842.

J. W. COUCH, *D'y clerk.*

Document C.

State of Louisiana, parish of Madison:

Be it remembered, that on this sixth day of February, A. D. eighteen hundred and forty-one, before me, Richard Charles Downes, parish judge, and ex officio notary public, in and for said parish, personally appeared Dougal McCall, a resident of the parish of Concordia, in this State, who said and declared, that, whereas, he stands justly indebted to the succession of Jesse Harper, late of this parish, deceased, in the sum of eleven thousand four hundred and thirty-three $\frac{66}{100}$ dollars, for which he has this day made and executed his three several promissory notes, of even date herewith, for the sum of three thousand eight hundred and eleven $\frac{22}{100}$ dollars each—all which are made payable to the order of D. Stanbrough, curator, (of said succession,) at the Merchants' Bank, in New Orleans: the first on the first day of January next, 1842; the 2d on the first day of January, 1843; and the 3d and last on the 1st day of January, 1844; all bearing interest, at eight per cent. per annum, from date—all which notes are paraphed according to law, to identify them herewith. Now, in order to secure the full and punctual payment of all the said notes, as they respectively fall due and payable, according to their tenor, he, the said Dugal McCall, does hereby specially mortgage and hypothecate, in favor of David Stanbrough, curator as aforesaid, all the following described property, lands situate on Walnut Bayou, in this parish, viz:

That certain plantation, situate as aforesaid, containing six hundred and eighty-two $\frac{24}{100}$ acres, and composed of lots Nos. four, five, and six, of section No. thirty-six, in township No. sixteen, of range No. thirteen east. Lots Nos. one, two, five, six, seven, and twelve, of section No. eighty-eight, in township No. fifteen, of range No. thirteen east. The southeast quarter of southeast quarter of section No. forty-eight, in township No. sixteen, range No. fourteen east; and the northwest quarter of section No. twenty-two, in township No. fifteen, range No. fourteen east.

Hereby confessing judgment in favor of said D. Stanbrough, curator as aforesaid, for the said sum of money, to be paid with interest as aforesaid, and covenanting not to dispose of said land to the prejudice of this mortgage.

And to these presents also personally appeared the said David Stanbrough, curator, &c., who declared, that he does hereby accept this mortgage, and that he authorizes the recorder of mortgages for this parish to cancel and release a certain mortgage, of record in this parish, from Thomas A. Compton to him, the said curator, for securing the payment of the sum of sixteen thousand three hundred and seventy $66\frac{2}{3}$-100 dollars, dates April 23d, 1839. And the said parties dispense with the production of a certificate of mortgages, and release me, judge, from all liability for passing this act without said certificate. The said mortgager declares, that he acquired the above described and mortgaged lands at a sheriff's sale of property of said Thomas A. Compton, made in this parish to-day.

Done and passed, on the day and date first above written, in presence of Thomas B. Scott and Thomas A. Compton, competent witnesses, who sign with said appearers and me, judge and notary, after due reading hereof.

(The original is signed)

DUGAL McCALL,
D. STANBROUGH, *Curator.*
THO. B. SCOTT,
THOS. A. COMPTON,
RICH'D C. DOWNES,
Parish judge.

State of Louisiana, parish of Madison:

I certify that the foregoing is a true copy of the original act on file in my office, and recorded in book of conventional mortgages A, pages 154 and 155.

[SEAL.] Witness my signature and official seal, this 18th day of July, A. D. 1842.

R. C. DOWNES, *Parish judge.*

(Endorsed.)—537.—Dugal McCall mortgage to D. Stanbrough, curator.—(C.) Filed, August 9th, 1842.

J. W. COUCH, *D'y clerk.*

Document D.

LEWIS A. COLLIER, vs. JOSIAH STANBROUGH. } 589.

Ninth district court of the State of Louisiana, for the parish of Madison.

The plaintiff in injunction relies upon the following facts, and he cannot go safely to trial without the documents necessary to prove them:

1st. Some two or three years since, a judgment was obtained in the United States circuit court for the eastern district of Louisiana, against David Stanbrough, as curator of the succession of Jesse Harper, deceased,

upon a claim against the succession of said Harper, at the suit of the Farmers' Bank of Virginia, (perhaps the suit is styled "The President, Directors, and Company of the Farmers' Bank of Virginia, vs. David Stanbrough, curator of the estate of Jesse Harper;") all which will appear by the judgment.

2d. Some twelve or fifteen months since, an execution, (a fi. fa.) issued from said United States circuit court, at the instance of the plaintiff in said suit, and under said execution a levy was made on the three notes mentioned in the petition of the plaintiff in injunction; and after due advertisement, the property was offered for sale, and was sold to Lewis A. Collier, the plaintiff in injunction, and a transfer, in writing, was made of said property, by the marshal, to said Collier. The seizure of the notes relied on, was made by notifying David Stanbrough, in whose hands they were, that they were thereby seized by virtue of said execution, but they never came to the corporal possession of the marshal; all which will appear by the execution, the return of the marshal thereon, and the conveyance of the marshal sale to Collier as aforesaid.

3d. Said transfer was returned to the office of the clerk of said United S. court, and there duly recorded.

The statement of facts, on which the plaintiff in injunction relies, as mentioned above, and which facts are hereinbefore enumerated, is admitted by the defendant in injunction to be true.

BEMISS, J. DUNLAP, B. M. BRAWDER,
Attorneys for defendants.

The plaintiff in injunction admits, that the notes in controversy were never appraised, and that the sale was made without appraisement, and that the notes in question belonged to the succession of said Harper, which said succession, at the time the said seizure was made, in manner stated above, was in due course of administration in the probate court of the parish of Madison.

R. C. STOCKTON,
Att'y for Collier.

(Endorsed.)—No. 589.—L. A. Collier vs. Josiah Stanbrough, agreement of counsel as to facts admitted.—(D.)

Document E.

State of Louisiana, parish of Madison:

Court of probates.

To the honorable Rich'd Chs. Downes, judge, in and for the parish and court aforesaid.

The petition of David Stanbrough, a resident of said parish, respectfully sheweth, that the succession of Jesse Harper, of said parish, was opened in your honorable court in the year 1838, and your petitioner was duly appointed and qualified curator for the absent heirs of said succession; that some time afterwards, a suit was commenced against your petitioner, as curator aforesaid, [in] the United States circuit court for the

eastern district of Louisiana, on account, to the best of his belief and knowledge, of certain notes drawn by Thompson L. King, of said parish, or in some manner for his benefit, and for which notes, the said Jesse Harper, in his lifetime, became in some measure liable, by endorsement or otherwise; that your petitioner was advised, that he was in nowise called upon to acknowledge the authority of said Federal court in the premises; that notice of levy, on behalf of said Bank of Virginia, and by virtue, as he supposes, of a judgment obtained by the said bank, in the suit aforesaid, have been lately served on your petitioner; said levy purporting to be made on certain promissory notes, now or late the property of the succession of said Harper, which notices are hereunto subjoined, (marked A.)

Your petitioner further shews, that a certain Lewis A. Collier, whom your petitioner understands and believes to be the real owner of said claim, as made by the Farmers' Bank of Virginia, or to be in some manner interested in the same, did, by his instrument of writing, of record in the parish judge's office of the parish aforesaid, (a copy of which is hereunto annexed B,) undertake and assume to release to the said Thompson L. King, certain notes, of which said King was the drawer, or for which he was responsible, and among them, two specified as having had judgment obtained on them against D. Stanbrough, curator, which notes were so released for valuable consideration, to wit, the purchase of certain lands, which were delivered to said Collier, and of which he is now in possession.

And your petitioner further represents, that it is a known principle of law, and one expressly recognised by our supreme court, "that jurisdiction having once become vested in a competent court, cannot be taken away."—Nicholson vs. Packwood, 1 N. S. 299.

It is perhaps the better opinion, that on the death of an individual, the jurisdiction of the probate court immediately takes effect; indeed, it is hard to conceive the case otherwise. Seals are placed, and possession taken, under the authority of that court. The heir, on the instant of the ancestor's death, becomes possessed; and that possession, and all the rights attached to it, or accompanying it, are immediately matters of cognizance by the probate court. But, however this may be, it is evident, that after inventory taken, and "a " after appointment and qualification of a curator, the control of the succession is wholly in that court, and its jurisdiction becomes completely vested; indeed, it may then be considered virtually in possession, the possession being in the hands of its agent and creature, the curator, who is appointed by it, accountable to it, and removeable by it, on any failure of obedience to its orders. All matters relating to a succession, and exclusively, all debts due by it, are of the jurisdiction of the probate court, whether specially brought to its notice or not, and cannot be enquired into elsewhere. A suit, therefore, brought against a curator in the U. States courts, is null and void—those courts, in such case, being without jurisdiction, both "ratione personæ," and "ratione materiæ," also—11 L. R. 109. "An administrator cannot be legally called upon to pay debts, except in the probate court,"—C. Code 1091, 1105.

The injustice, as well as illegality, of proceedings requiring successions in the federal courts, is manifest, until the affairs of a succession are duly investigated; it is impossible to determine whether there is sufficient to pay debts, &c., what portion of an estate may be separate or belong to the "community," what are the tacit mortgages with which it may be burdened, &c. Of all this the U. S. circuit court know nothing; neither the facts nor the persons are before them.

But allowing, for the sake of argument, that a suit against a curator, as such, can be amicably brought in a federal court, still, when judgment should be obtained, it cannot be pretended that such judgment would possess any priority, or privilege, or any other liquidated debt of the succession. A judgment obtained against the deceased in his lifetime, in a federal court, and not recorded, according to law, could not be enforced after his death against his succession, by an execution issued by that court; much less could a judgment so obtained, after his death, be enforced to the injury of the other creditors of the estate, or it might be of privileged debts. If there be one clear principle in our law, it is, that a judgment obtained against an estate can give no privilege not belonging to the debt on which it should be founded—Waters vs. Mercier, 4 L. R. 17.

In the cases Schroeder's Syndics vs. Nicholson, 2 L. R. 351, and Bauduc's Syndics vs. Nicholson, 4 L. R. 83, it was decided, that the property of a debtor, ceded by him and in the hands of the syndics, could not be interfered with by the federal courts. The principle is the same. The federal courts could know nothing of the rights of the parties interested; and if they could, it was a matter in which the jurisdiction of the State authorities had already taken effect, and in which a foreign court had no right to interfere; so the property of a succession in the hands of a curator is no longer that of the deceased, it belongs to his heirs, creditors, &c.; and before disposition is made of any part of it, the interest of all these parties must be investigated and legally settled. The curator in any case, by fair implication, would, and in case of succession proving insolvent, actually does, stand in the place of the syndic. In the case of Dunn & Wife, 7 M. R. 436, it was decided, that injunction could issue from a State court to the U. States marshal, respecting the sale of property taken by him in execution, and of which plaintiff in injunction claimed to be owner. The parties complaining had not been represented, and the State is bound to protest her citizens. If on the ground that a citizen of another State is a party interested, the federal courts are allowed to intermeddle with successions, the whole probate business may as well be turned over to them at once, and suitors from the whole State be dragged to N. Orleans, or wherever else it may please the federal judges to grant them a hearing. There are few successions in which some person residing out of the State has not some claim, real or pretended; a party might even purposely remove out of the State, or a claim be transferred to a non-resident. In this manner, any thing whatever, from the proving of a bill to the appointment of a curator, to the final settlement and homologation of a curator's account, might be questioned

and investigated, repealed or confirmed, at any stage of the proceedings, by the authority of a foreign court, and the utmost confusion and irregularity introduced into the most complicated and important business of the community.

If in any case local jurisdiction is required for the ends of justice, it is in that of successions. If administered at a distance, and more especially if administered by the federal court, it requires no argument [to] point out the oppression and injustice which must take place; a litigated suit, ending with an appeal to the Supreme Court of the United States, would swallow up a small succession.

Your petitioners therefore respectfully submit:

1st. That the debt on which judgment is claimed to have been obtained against him as curator, in the U. S. circuit court aforesaid, has been satisfied by Thompson L. King, the real debtor, at least so far as to render proceedings against the Harper's succession unjust and illegal.

2nd. That the said proceedings, in the said circuit court of the United States, are altogether irregular, illegal, null and void, having been "corem non judice."

3rd. That even if a judgment could be rightfully obtained in the said U. S. court, in the premises, no execution could be enforced by virtue thereof.

4th. And that there are other claimants against the succession of said Harper, to whom, your petitioner believes, great injustice would be done by the enforcing, in this manner, of the claim of said bank, (Farmers' Bank of Virginia.)

The prayer of your petitioner therefore, is, that the said marshal of the U. States, for the eastern district of Louisiana, and all other persons whatsoever, be enjoined and restrained from any other or further action or proceeding, on account of, or by virtue of, said judgment, or any other process or proceeding had, or to be had, in the said U. S. court, regarding the premises, against your petitioner as curator of said succession of Harper, or against the said succession, or part or portion thereof; and further, that the said Farmers' Bank of Virginia, and the said Lewis A. Collier, or either of them, may be held liable for, and decreed to pay to your petitioner, as curator aforesaid, all the costs and charges which have accrued or may to him accrue, as well as one thousand dollars, special damages, on account of their illegal and wrongful conduct in the premises. And your petitioner further prays for general relief.

G. WALTER PHILIPS, *for petitioner.*

Personally appeared before me, David Stanbrough, who, being duly sworn, deposeth and saith, that the matters stated in the above petition, positively, and of his own knowledge, are true, and those stated as matters of opinion and belief, are true, to the best of his knowledge.

DAVID STANBROUGH, *Curator.*

Sworn and subscribed before me, this 31st day of Dec'r, 1841.

J. M. WILKINSON,
Justice of the Peace.

Order of the Judge.

STATE OF LOUISIANA, *parish of Madison.*

DAVID STANBROUGH,
vs.
FARMERS' BANK OF VIRGINIA et al.

Court of Probates.

Having duly considered the matters submitted in this case, and heard the plaintiff's counsel. It is ordered and decreed, that an injunction issue as prayed for.

Done and issued in open court, this 10th day of March, A. D. 1842.

R. C. DOWNES, *P. Judge.*

(Endorsed) 16 court of probates, David Stanbrough, curator, &c. Jesse Harper vs. Farmers' Bank of Virginia et al. Filed Jan'y 1st, 1842. R. C. DOWNES, *P. Judge.*

Petition for injunction.

Writ of Injunction.

STATE OF LOUISIANA, *parish of Madison.*

Court of Probates.

To the marshall of the United States for the eastern district of Louisiana, and to his deputies, especially to Joseph Hynes, acting as deputy aforesaid; to the Farmers' Bank of Virginia, and all her representatives, and particularly to Lewis A. Collier; and to all others whom it doth or may concern. Be it known, that in virtue of a decree of said court, dated this 10th day of March, A. D. 1842, you are hereby enjoined and prohibited from all and any other, or further and future action or proceeding, on account of, or in virtue of, a judgment of the United States circuit court, for the eastern district of Louisiana, in suit styled President, Directors & Co., of the Farmers' Bank of Virginia vs. D. Stanbrough, curator, No. 747.

Herein fail not, under the penalties and liabilities prescribed by law. Witness the signature of the judge, and seal of said court, this [SEAL.] 10th day of March, A. D. 1842.

R. C. DOWNES, *P. Judge.*

(Endorsed) court of probates, David Stanbrough, curator, &c. Jesse Harper vs. Farmers' Bank of Virginia et al. Original injunction filed March 15, 1842.

R. C. DOWNES, *P. Judge.*

Sheriff's Return.

Received, March the 10th, 1842, and served the 14th of the same month and year, by handing a true copy of this injunction to Joseph Hines, in person, in the parish of Madison, La.; also by posting a true copy of the same at the door of the clerk's office, in the town of Rich-

mond, parish of Madison, La., which was directed to Lewis A. Collier, he being a non resident of the parish of Madison.

Mileage, 1.50, service, 1.50.

T. B. SCOTT, *Sheriff.*
By J. L. CRANDELL, *Constable.*

Supplemental Petition.

STATE OF LOUISIANA, *parish of Madison.*

Court of Probates.

To the hon'ble R. C. Downes, judge of probates in and for said parish. The petition of David Stanbrough, curator, &c., of the succession of Jesse Harper, deceased, respectfully sheweth: That J. L. Hynes, claiming to be deputy U. S. marshal, for Madison parish, was, on the ... day of March last enjoined, by a decree of your hon'ble court, from proceeding further against the succession of said Harper, in any manner whatever, on account of a certain judgment, claimed to have been obtained in the federal circuit court, for the eastern district of Louisiana; that a decree to the same effect, issued with regard to all other persons, and especially a certain Lewis A. Collier, that in pursuance of said decree, writs of injunction have been duly served on the said Hynes and Collier. Your petitioner further shews, that the said Hynes and the said Collier have disobeyed *and said* order, by publishing in the newspaper known as the "Richmond Compiler," published at Richmond, Madison parish, an advertisement of the notes levied on as belonging to the estate of said Harper, by virtue of the said pretended judgment, and giving notice of their sale, by virtue thereof, on the 9th day of April next.

Your petitioner therefore prays, that proceedings be had against the said Hynes, and the said Collier, and any other person who may have [been] aiding or abetting them, for a notorious contempt of your hon'ble court, and disregard of the laws and authority of the sovereign State of Louisiana. That a writ of injunction issue to Dugald McCall, the drawer of three of said notes so levied on, forbidding and enjoining him from paying them, or any part of them, or in any manner making satisfaction thereof to any other person than to your petitioner, as curator aforesaid, or to his order; and also to Elijah Evans, and J. G. Fulwell, the drawers of the two remaining notes, to the same effect and purpose. That a writ of injunction do issue to James M. Downes, editor and proprietor of the paper called the "Richmond Compiler," and to all, and all other persons in any way connected with said newspaper, enjoining and restraining them, and all of them, from any further publication of said sale in said newspaper, or in any other manner; and further prays for general relief in the premises. J. WALTER PHILIPS.

Order of the Judge.

STATE OF LOUISIANA, *parish of Madison.*

Court of Probates.

It is, by reason of the law and the evidence, ordered and decreed, that

an injunction issue, as prayed for, in the supplemental petition of D. Stanbrough, curator, &c., vs. the Farmers' Bank of Virginia and others.

Done and signed in open court, April 1st, 1842.

R. C. DOWNES, *P. Judge.*

(Endorsed) court of probates, succession of Jesse Harper. David Stanbrough, curator, &c., vs. Farmers' Bank of Virginia and al. Supplemental petition for injunction. Filed April 1st, 1842.

R. C. DOWNES, *P. Judge.*

Writ of Injunction.

STATE OF LOUISIANA, *parish of Madison:*

Court of probates—succession of Jesse Harper.

DAVID STANBROUGH, curator, vs FARMERS' BANK OF VIRGINIA & al.

To James M. Downes, esqr., editor and proprietor of the Richmond Compiler, a newspaper published at Richmond, in said parish.

In pursuance of a decree of the said court, dated this 1st day of April, A. D. 1842, you are hereby enjoined and prohibited from making any further publication, in said newspaper, of an advertisement for sale of certain property seized in execution by the marshal of the United States for the eastern district of Louisiana, in virtue of a writ from the United States circuit court for said district, in the suit styled President, Directors & Co., of the Farmers' Bank of Virginia vs. D. Stanbrough, curator, &c., No. 747.

Herein fail not, under the same penalties that are imposed for contempt of court.

Witness the signature of the judge, and seal of said court of probates, [SEAL.] this 1st day of April, A. D. 1842.

R. C. DOWNES, *P. judge.*

Sheriff's return.

Received on the 2d day of April, 1842, and served on the same day, by handing a certified copy of this writ of injunction to James M. Downes in person, at the residence of R. C. Downes, parish of Madison, Louisiana, April 2d, A. D. 1842.

Service $2 00.

G. W. TACKINGTON,
Dept. sheriff.

Endorsed. Court of probates, succession of Jesse Harper, D. Stanbrough, curator, vs. Farmers' Bank of Virginia and al. Writ of injunction for James M. Downes, filed April 4, 1842.

R. C. DOWNES, *P. judge.*

Minutes.

And on Wednesday, May 17th, 1843, the following entry was made on the minutes of the court, p. 450.

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH et al. } 589.

Motion for new trial filed, and overruled.

Motion.

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH. } No. 589.

Ninth district court of the State of Louisiana, for the parish of Madison.

The plaintiff, Lewis A. Collier, comes into court, and moves that a new trial be granted him in the above entitled case, on the ground that the judgment is contrary to law and evidence, and that the judgment is otherwise illegal and void.

(Endorsed.) No. 589, Lewis A. Collier vs. Josiah Stanbrough. Motion for a new trial filed 17th May, 1843.

JOHN. T. MASON, *Clerk.*

STOCKTON & STEELE
For plaintiff.

Judgment.

And on the 19th day of May, A. D. 1843, the following judgment was signed in open court.

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH et al. } No. 589.

Injunction, Madison district court, May term, 1843.

By reason of the law and the evidence being in favor of the defendant, Josiah Stanbrough, it is ordered, adjudged, and decreed, that the injunction sued out in this case be dissolved; and it is further decreed, that the defendant recover of the said plaintiff, Lewis A. Collier, and his surety, Archibald Matthews, *in solido*, the sum of four hundred and twenty-seven dollars damages, being ten per cent. upon the amount of said defendant's claim when enjoined, and that said plaintiff pay the costs of this suit to be taxed.

Done and signed this 19th day of May, 1843.

E. K. WILSON, *Judge 7th district.*

(Endorsed.) 589, ninth district court, Lewis A. Collier vs. Josiah Stanbrough et al. Judgment.

Minutes.

And on Friday, May 19th, A. D. 1843, the following entry was made on the minutes of the court, p. 455.

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH et al. } 589.

Motion for appeal filed; appeal granted made returnable to the supreme court of the State, at Alexandria, on the first Monday of October next, A. D. 1843, and the appeal bond is filed at the sum of one thousand dollars.

Motion.

LEWIS A. COLLIER vs. JOSIAH STANBROUGH et al. } 589.

Ninth district court of the State of Louisiana, for the parish of Madison.

The plaintiff, by his counsel Stockton & Steele, moves the court for an appeal from the final judgment rendered in this case on the 16th day of May, 1843, on giving bond according to law; that said appeal be made returnable into the supreme court of the State of Louisiana, at the next term thereof to be holden at Alexandria, on the first Monday of October, 1843, and that this court fix the amount of said bond.

(Endorsed.) No. 580, Lewis A. Collier vs. Josiah Stanbrough et al. Motion for appeal filed May 19, 1843.

JOHN T. MASON, *Clerk.*

Petition of appeal.

And on the 19th day of May, A. D. 1843, the following petition of appeal was filed.

LEWIS A. COLLIER vs. JOSIAH STANBROUGH et al. } No. 589.

Ninth district court of Louisiana, for the parish of Madison.

To the honorable the ninth district court of the State of Louisiana, held in and for the parish of Madison, the petition of Lewis A. Collier, the plaintiff in the above entitled suit, most respectfully shows:

That, in the above entitled suit, a final judgment was rendered by this honorable court, on the sixteenth day of May, 1843, and signed on the 19th day of May, 1843, in favor of said defendants, and against the said plaintiff, your petitioner, whereby your petitioner is irreparably aggrieved and injured, petitioner is advised by his counsel that there is manifest error in said final judgment. Wherefore petitioner prays to be allowed to take a suspensive appeal from said final judgment so rendered, and signed as aforesaid, to the supreme court of the State of Louisiana, on petitioner giving bond and security (which he tenders) as the law directs and requires; that said appeal be made returnable into the said supreme court at the next term thereof, to be holden at Alexandria, on the first Monday of October, 1843, and that the defendants, Josiah Stanbrough and Thomas B. Scott, sheriff, be duly cited to be and appear in said supreme court to answer to this appeal; petitioner prays for general relief; and as in duty, &c.

STOCKTON & STEELE,
Attorneys for Collier.

Order of the judge.

PARISH OF MADISON, *Louisiana:*

Let a suspensive appeal be granted as prayed for, returnable to the

supreme court of Louisiana, at the next term thereof, to be holden at Alexandria, on the first Monday of October, in the year 1843, on petitioner entering into bond for the sum of one thousand dollars, in favor of said Josiah Stanbrough and Thomas B. Scott, in solido, conditioned according to law.

Thus done and signed at Richmond, Louisiana, this nineteenth day of May, 1843.

E. K. WILSON, *Judge 7th district.*

(Endorsed.) No. 589, Lewis A. Collier vs. J. Stanbrough et al. Petition of appeal, filed May 19th, 1843.

JOHN T. MASON, *Clerk.*

Appeal bond.

Know all men by these presents, that we, Lewis A. Collier [and] William Amonett, are held and firmly bound unto Josiah Stanbrough and Thomas B. Scott, in solido, in the just and full sum of one thousand dollars; for the faithful payment whereof, we bind ourselves, our heirs, and assigns, firmly by these presents, this the 19th day of May, A. D. 1843. The condition of the above obligation is such, that whereas the above bounden Lewis A. Collier has this day presented to the ninth district court of the State of Louisiana for the parish of Madison, his certain petition, praying for an appeal from a final judgment rendered against him, wherein he is plaintiff, and Josiah Stanbrough *are* defendant, in suit No. 589 of the docket of said court, and granted him accordingly. Now, if the said Collier shall prosecute by appeal, and shall well and truly pay and satisfy all such judgments, damages, cost, &c., as may or shall be awarded against him in the appellate court, then the above obligation to be null and void, otherwise to remain in full force and virtue of the law, this day and date above written.

Given from under our hands, in presence of J. J. Amonett.

WILLIAM AMONETT,
LEWIS A. COLLIER.

Attest: J. J. Amonett,
Thos. W. Amonett.

(Endorsed.) 589, ninth district court, parish of Madison, L. A. Collier vs. J. Stanbrough. Bond filed 19th May, 1843.

JOHN T. MASON, *Clerk.*

Citation of appeal.

And on the 15th day of July, A. D. 1843, the following citation of appeal issued.

Lewis A. Collier
vs. } No. 589.
Josiah Stanbrough et al.

State of Louisiana, ninth district court, parish of Madison.

To Thomas B. Scott, sheriff of the parish of Madison:

Whereas Lewis A. Collier, appellant, has filed his petition, and ob-

tained an order of appeal from the judgment rendered in the above entitled suit, and has given bond and security according to law: Now, therefore, you are hereby cited to be and appear in the supreme court of Louisiana, to be holden at Alexandria in this State, on the first Monday in October next, to answer to said petition according to law.

Witness the honorable Thomas Curry, judge of the ninth district court, in and for the parish of Madison, this 15th day of July, A. D. 1843.

[SEAL.]

JOHN T. MASON,
Clerk of said court.
By A. R. POTTER, *Dep. clk.*

(*Return.*)

Received July the 15th, 1843, and served on the 17th of the same month and year, by handing a certified copy of the petition of appeal, and of this citation, to T. B. Scott, sheriff of the parish of Madison, in person, in Richmond, in the parish of Madison, Louisiana.

Service $2 50. JAMES L. CRANDELL, *Coroner.*

(Endorsed.) No. 589, Madison district court, citation of appeal to Thos. B. Scott, sheriff. Filed July 18th, 1843.

A. R. POTTER, *Dy. clerk.*

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH et al. } No. 589.

State of Louisiana, ninth district court, parish of Madison.

To Josiah Stanbrough, residing in the parish of Madison:

Whereas Lewis A. Collier, appellant, has filed his petition, and obtained an order of appeal from the judgment rendered in the above entitled suit, and has given bond and security according to law: Now, therefore, you are hereby cited to be and appear in the supreme court of Louisiana, to be holden at Alexandria in this State, on the first Monday in October next, to answer to said petition according to law.

Witness the honorable Thomas Curry, judge of the ninth district court, in and for the parish of Madison, this 15th day of July, A. D. 1843.

[SEAL.]

JOHN T. MASON,
Clerk of said court.
By A. R. POTTER, *Dy. clk.*

(*Sheriff's return.*)

Received on the 15th day of July, A. D. 1843, and served on the 21st of the same month and year, by handing a certified copy of this citation, and of the petition of appeal, to Josiah Stanbrough, in person, at the residence of Jesse Stanbrough, on Roundaway bayou, in the parish of Madison, Louisiana.

Parish of Madison, Louisiana, July 22nd, A. D. 1843.

J. W. COUCH, *Dept. shff.*

Service $2 50, mileage 50—$3 00.

(Endorsed.) No. 589, Madison district court, citation of appeal to Josiah Stanbrough, filed July 25, 1843.

A. R. POTTER, *D'y Clerk.*

Clerk's Certificate.

STATE OF LOUISIANA, *Parish of Madison, ninth district court:*

I, John T. Mason, clerk of the ninth judicial district court of the State of Louisiana, in and for the parish of Madison, do hereby certify, that the foregoing forty-one pages, numbered from one to forty-one, inclusive, contain a full, true, and complete transcript of all the proceedings had, and of the documents filed, in a suit, number 589, on the docket of said court, wherein Lewis A. Collier is plaintiff, and Josiah Stanbrough and others, are defendants, and also that it contains a full and true statement of all the evidence offered on the trial of said suit.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, this 26th day of July, A. D. 1843.

[SEAL.]

JOHN T. MASON,
Clerk of said court.

I certify the foregoing to be a true copy of the record or transcript of the above entitled suit of Lewis A. Collier vs. J. Stanbrough et al., filed in my office on the 30th of September, A. D. 1843.

Given under my hand and seal of office, as deputy clerk of the supreme court, for the western district of Louisiana, at Alexandria, on this ninth day of November, A. D. 1843.

[SEAL.]

A. L. BRINGHURST, *D'y Clerk.*

SUPREME COURT OF THE STATE OF ALABAMA, *Western district:*

ALEXANDRIA, October term, 1843.

LEWIS A. COLLIER, vs. JOSIAH STANBROUGH. } No. 995.

Plaintiff assigns for errors, for which the judgment of the honorable the supreme court of Louisiana ought to be reversed by the honorable the Supreme Court of the United States, and a judgment rendered in his favor, as prayed for in his original petition, as follows, to wit:

1st. The decision of the supreme court of Louisiana denies to the circuit court of the United States, for the State of Louisiana, the power to execute a judgment rightfully rendered by said circuit court against the representative of a succession, by proceeding to sell the property of the same, by a writ of fi. fa., or otherwise.

2d. The supreme court of Louisiana erred in assuming authority to enquire into the validity of a judgment or execution from the said circuit court, or of the manner in which said execution was proceeded on. The Constitution and laws of the United States guaranteeing and conferring said circuit court the power to take cognizance of such cases as that whereon said execution issued, to wit: the case of the Farmers' Bank of Virginia vs. David Stanbrough, curator, &c., which necessarily includes the power to execute judgment so rendered.

3d. The supreme court of Louisiana erred in sustaining the law of that State, which requires money demands against a succession to be prosecuted exclusively in the probate court, which law, the plaintiff avers, contravenes the Constitution and laws of the United States, so far as it requires foreign creditors to prosecute their demands as aforesaid, in said State court, and is, therefore, as to them, null and void.

5th. The judgment aforesaid of the supreme court of Louisiana is, for other reasons, illegal and erroneous, and ought to be reversed.

For the errors herein before assigned, the said plaintiff prays the honorable the Supreme Court of the United States *of the United States* to reverse the said judgment of the supreme court of Louisiana, and the judgment of the ninth judicial district court of said State, for the parish of Madison; and proceeding to give such judgment as plaintiff avers should have been rendered by the court of the first instance, that it decree him such relief as is prayed for in his original petition, presented to said court of the first instance; and plaintiff prays for general relief; and as in duty, &c.

RICHARD C. STOCKTON,
Counsel for plaintiff in error.

(Endorsed)—No. 995, Sup. Court La., W. D., at A. Lewis A. Collier vs. Josiah Stanbrough. Assignment of errors, &c. Filed, November 7th, 1843.

A. L. BRINGHURST,
D'y clerk supreme court.

I certify the foregoing to be a true copy of the assignment of errors, filed in the above entitled case in my office.

Given under my hand and seal of office, as deputy clerk of the supreme court, for the western district of Louisiana, at Alexandria, this 9th day of November, A. D. 1843.

[SEAL.]

A. L. BRINGHURST, *D'y Clerk.*

SUPREME COURT OF THE STATE OF LOUISIANA,
Western district, Alexandria:

P. S. KENNARD, }
vs.
DAVID STANBROUGH. }

Plaintiff assigns for cause, for which the judgment of the honorable the supreme court of Louisiana ought to be reversed by the honorable the Supreme Court of the United States, and a judgment rendered in his favor, as prayed for in his original petition, as follows, to wit:

1st. The decision of the supreme court of Louisiana denies to the circuit court of the United States, for the State of Louisiana, the power to execute judgment rightfully rendered by said circuit court against the representative of a succession, by proceeding to sell the property of the same, by a writ of fi. fa., or otherwise.

2d. The supreme court of Louisiana erred in assuming authority to enquire into the validity of a judgment or execution from the said cir-

cuit court, or the manner in which said execution was proceeded on, the Constitution and laws of the United States guaranteeing and conferring on said circuit court the power to take cognizance of such cases as that whereon execution issued, (to wit, the case of the "Farmers' Bank of Virginia vs. David Stanbrough, curator," &c.,) which necessarily includes the power to execute judgments so rendered.

3d. The supreme court of Louisiana erred in sustaining the law of that State, which requires money demands against a succession to be prosecuted exclusively in the probate court, which law, the plaintiff avers, contravenes the Constitution and laws of the United States, so far as it requires foreign creditors to prosecute their demands as aforesaid, in said State court only is, therefore, so far null and void.

5th. The judgment aforesaid of the supreme court of Louisiana is, for other reasons, illegal and erroneous, and ought to be reversed.

For the errors herein before assigned, the said plaintiff prays the honorable the Supreme Court of the United States to reverse the said judgment of the supreme court of the State of Louisiana, and the judgment of the ninth judicial district court of said State, for the parish of Madison; and proceeding to give such judgment as plaintiff avers should have been rendered by the court of the first instance, that it decree him such relief as is prayed in his original petition, presented to the said court of the first instance; plaintiff prays for general relief; and as in duty, &c.

ALONZO SNYDER,
Counsel for plaintiff.

(Endorsed)—No. 1,019, Sup. Court La., V. D., at A. P. S. Kennard vs. D. Stanbrough. Assignment of errors. Filed November 7th, 1843.

A. L. BRINGHURST,
D'y clerk supreme court.

I certify the foregoing to be a true copy of the assignment of errors filed in my office in the above entitled cause.

Given under my hand and seal of office as deputy clerk of the supreme court for the western district of Louisiana, at Alexandria, on this 9th day of November, A. D. 1843.

[SEAL]

A. L. BRINGHURST, *Dy. Clerk.*

LEWIS A. COLLIER
vs.
JOSIAH STANBROUGH et al.

Appeal from the court of the ninth judicial district for the parish of Madison.

Plaintiff represents, that he is the owner of a certain debt, which was originally due by one Dugall McCall to the vacant succession of Jesse Harper, dec'd; that said debt is evidenced by three promissory notes, made payable by said McCall to the order of David Stanbrough, curator of the said vacant estate; and that said three notes are secured by a mortgage on a certain tract of land in the parish of Madison. He fur-

ther states, that he purchased said notes at marshal's sale, regularly made by virtue of a writ of fi. fa., issued on a judgment rendered against said curator by the district court of the United States, for the eastern district of Louisiana. He also alleges, that the defendant, Josiah Stanbrough, illegally possessed himself of the first due of said notes, obtained upon it an order of seizure and sale of the property mortgaged, and that the sheriff is about to proceed to sell the land, but that if he is permitted to proceed to the said sale, it will cause the petitioner an irreparable injury. He further avers, that he is a creditor of the said vacant succession in a large amount, and that said estate is insolvent; that said curator has connived with the defendant, Josiah, to cheat and defraud the estate, and the creditors thereof, &c.; and that said Josiah took the note in question with a full knowledge of plaintiff's claim, and gave no value or consideration for it. He prays to be declared to be the owner of the note, but that if he fails in his demand, said note be adjudged to belong to the said vacant estate, and that the defendants may be perpetually enjoined from further proceeding, &c. A writ of injunction was issued accordingly.

The defendant first pleaded the general issue; denied specially that plaintiff has any right to the note alluded to in his petition; denied, also, that the said note was ever legally seized, or levied on, or sold, by the United States marshal; and averred that he himself is the rightful owner of said note; that the sale made by the marshal was null and void, because the forms of law were not observed by said marshal in making the sale; that there was no legal seizure, no legal appraisement, and no advertisement; that said sale was illegal and fraudulent upon its face, and is an absolute nullity; and, finally, that succession property in this State, in due course of administration in the probate courts of Louisiana, cannot be legally subjected to any writ of execution from the federal courts, and that a sale thereof conveyed no rights to the plaintiff. He prayed that plaintiff's claim be rejected; that the injunction be dissolved with damages, &c., &c.

The court *a que* rendered judgment in favor of the defendant, dissolved the injunction, and condemned the plaintiff and his surety on the injunction bond to pay to the defendant $427 damages, and from this judgment the plaintiff appealed.

The evidence establishes the following facts: a judgment was rendered in the U. S. court, ninth circuit, eastern district of Louisiana, in the suit of the Farmers' Bank of Virginia vs. David Stanbrough, curator of the estate of Jesse Harper, dec'd, for upwards of $1,200; the marshal*l* proceeded to execute said judgment against the curator, whereupon said curator obtained a writ of injunction in the court of probates to arrest the sales, which injunction was dissolved on the grounds of usurpation and assumed authority by the said court of probates. The marshal*l* proceeded then to seize all the rights and title of the curator to three promissory notes secured by special mortgage, then in his hands, and notified him of the seizure; the sale was advertised, but the notes were not appraised, and the three notes were adjudicated by the marshal*l*

to the plaintiff in this cause for the sum of $3,500. The aggregate amount of the notes is $11,433 66. After the sale of the notes, the first due of the same was endorsed over and transferred by the curator to Josiah Stanbrough, who obtained an order of seizure and sale thereon; whereupon the present suit was instituted, and the injunction sued out.

It is further admitted in the record, that the plaintiff is a creditor of Jesse Harper's estate, and that for ten years at least said succession has been insolvent; that David Stanbrough is, and has been, the curator of said estate, ever since the first of Jan'y, 1840; that an inventory of said estate was taken by the probate court; that a sale of the property took place, and that the notes in dispute are the proceeds of the sale, and that all the proceedings took place by order of the probate court. It is also admitted that the notes sold by the marshal never came to his corporeal possession, and there is no evidence that the note in question did not come fairly to the possession of the defendant; said note is endorsed by the curator, and it appears to have been so endorsed previous to its being protested for non-payment.

This case presents a question, very similar in its nature and effect to the one which we had under our consideration in the case of *Garrard vs. Reed*, lately decided at Opelousas, in which we held in substance that a judgment rendered by a federal court cannot be executed by the seizure and sale of property belonging to an insolvent succession under the administration of a curator, administrator, or testamentary executor; and that such judgment, sought to be enforced by an execution put in the hands of the marshal, cannot be satisfied in any other manner but by presenting the same to the court of probates for classification, to be paid in the course of administration. Since then, a very similar question presented itself before us at the present term of this court, in the case of *Lawrie vs. Erwin*, decided to-day, in relation to the issuing of an order of seizure and sale by the United States court, in which we have again recognized the same doctrine, supported by very strong authorities, and held that "a creditor residing in another State, cannot issue an execution upon the judgment which he has obtained in the federal court against the executor or administrator of an estate, which is administered in the court of probates as insolvent, and take the property out of the hands of such executor or administrator, and leave nothing for the other domestic creditors." As this court said in 2 *L. R.* 351, this advantage cannot be given to a citizen of another State, as his right cannot be made to depend upon the tribunal where the remedy is sought; and we came to the conclusion in the case of *Lawrie vs. Erwin*, that "the circuit court of the United States had no authority to issue an order of seizure and sale against a testamentary executor." The want of jurisdiction or authority in such cases is "*ratione materiæ*," and such jurisdiction belongs exclusively to the probate court. 3 *Peter's cond. rep.* 311. Here the property seized was already in the hands of the probate court; it was in the possession of the curator as an officer appointed by that court; this officer was bound to dispose of it under the supervision and control of the probate court, and to divide its proceeds between the

creditors, according to their rank; and if it could be for a moment admitted that the proceeding complained of by the defendant was within the powers and authority of the federal court, it would have the effect of destroying at once all the legal privileges recognised by our laws, and create new and superior privileges, where none can exist. It is clear that the federal court was without jurisdiction to issue the execution complained of, and the marshal of the United States was without authority to carry it into effect. The doctrine is well recognised that "the local laws of the States of the Union can never confer jurisdiction on the courts of the United States; and that they can only furnish rules to ascertain the rights of the parties, and thus assist in the administration of the proper remedies, where the jurisdiction is vested by the laws of the United States. 11 *Peters*, 175. We must hold again, as we did in two cases above alluded to, that the property of the succession of Jesse Harper could not be seized by the marshal of the United States, and that the sale thereof made by him to the plaintiff under the execution issued against the curator of the said vacant and insolvent estate, is a mere nullity.

It is therefore ordered, adjudged, and decreed that the judgment of the district court be affirmed with costs, without prejudice to the right which the plaintiff may have to claim, and recover of the estate of Jesse Harper whatever amount he may have paid to the marshal as the price of his purchase for the benefit of the succession.

I certify the foregoing to be a true copy of the judgment rendered in the above recited case, taken from the records of my office.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the supreme court for the western district at Alexandria, as deputy clerk thereof, on this 24th day of January, A. D. 1844.

[SEAL.]

A. L. BRINGHURST,
Dy. Clk. S. court, Alexa.

UNITED STATES CIRCUIT COURT:

L. A. COLLIER
vs. } No.
J. STANBROUGH.

Bond for writ of error.

Filed, 184 . *Clerk.*

Know all men by these presents, that we, Lewis A. Collier, principal, and Richard C. Stockton, as security, are held and firmly bound unto J. Stanbrough, as sureties in the full and just sum of nine hundred dollars, to be paid to the said J. Stanbrough, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this second day of November, in the year of our Lord one thousand eight hundred and forty-three.

Whereas, lately, at a circuit court of the United States, ninth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein J. Stanbrough was plaintiff, and judgment was rendered against the said defendant, and the said having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the Monday of next.

Now, the condition of the above obligation is such, that if the said Lewis A. Collier shall prosecute said writ to effect, and answer all damages and costs, if he fail to make plea good, then the above obligation to be void; else to remain in full force and virtue.

LEWIS A. COLLIER, [L. S.]
By R. C. STOCKTON, *Attorney.*
RICHARD C. STOCKTON. [L. S.]

Sealed and delivered in the presence of me, who approve the same—
F. X. MARTIN.

I certify the foregoing to be a true copy of the original in my office. Given under my hand and seal of office as deputy clerk of the supreme court for the western district of the State of Louisiana, [SEAL.] at Alexandria, on this 24th day of January, A. D. 1844.

A. L. BRINGHURST,
Dy. clk. S. court, Alexa.

Copy of the writ of error lodged in the clerk's office, of the supreme court of the State of Louisiana, for the western district, at Alexandria, in pursuance of the statute in such cases made and provided, this 7th day of November, 1843.

RICHARD C. STOCKTON,
Attorney of plaintiff in error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, sitting at Alexandria, [SEAL.] for the western district of said State, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, between Lewis A. Collier, plaintiff in error, and Josiah Stanbrough, defendant in error, a manifest error hath happened, to the great damage of the said Lewis A. Collier, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under you seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at

Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this second of November, in the year of our Lord one thousand eight hundred and forty-three.

D. N. HENNEN,
Clerk of the United States circuit court, and eastern district of Louisiana.
By H. B. PAGE, *Dep. clerk.*

STATE OF LOUISIANA:

Allowed by me, F. X. Martin, senior and chief justice of the supreme court.

F. X. MARTIN.

Know all men by these presents, that we, Lewis A. Collier, (as principal) of Concordia parish, Louisiana, and Richard C. Stockton, of Madison parish, and State of Louisiana, as security, are held and firmly bound, jointly and severally, unto Josiah Stanbrough of the parish of Madison aforesaid, his heirs, executors, administrators and assigns, in the sum of nine hundred dollars, lawful money of the United States of America, to be paid to the said Josiah Stanbrough, his heirs, executors, administrators and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the first day of February, in the year of our Lord eighteen hundred and forty-four.

Whereas the above bound Lewis A. Collier has, on the 2d day of November, 1843, presented a petition to the honorable the supreme court of Louisiana, holding session at Alexandria, in and for the western district of said State, praying a writ of error in the matter of suit of Lewis A. Collier vs. Josiah Stanbrough, to take the same to the honorable the Supreme Court of the United States, for correction of the judgment of said supreme court, which is the court of dernier resort in said State; and said writ of error was granted by the honorable Francois X. Martin, chief justice of said supreme court of said State, on 2d day of November, 1843; and bond was then given by the undersigned obligors in favor of said Stanbrough, according to law, and was approved by said chief justice; but in the filling up said bond by mistake, the said suit was stated to be pending in the United States circuit court for the eastern district of Louisiana, instead of the supreme court of the said State of Louisiana.

Now, the condition of the above obligation is, that we, the above bounden Lewis A. Collier and Richard C. Stockton, will well and truly pay to the said Josiah Stanbrough, the defendant in said writ of